

# WETLANDS COUNCIL

## MINUTES

November 12, 2013

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The Wetlands Council met on Tuesday, November 12, 2013 in Rooms 112, 113, & 114 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

**Attendees:** Chairman Chip Kimball, Councilors: Ryan Crosbie, Carol Henderson, Deborah Lievens, James Kennedy, Seth Prescott, and Susan Slack

**Absentees:** Councilors: Frank Byron, Sharon Champagne and Thomas Sloan, Russ St. Pierre, Robert Snelling

Also present were: Paula Scott, Appeals Clerk and Carolyn Guerdet, Council Clerk

The regular Wetlands Council meeting was called to order by Chairman Kimball at 9:05 a.m. with introductions and a quorum present.

### 1. Approval of Minutes

- ***Councilor Crosbie made a motion to approve the October 8, 2013 minutes, second by Councilor Henderson. Motion passed unanimously.***

It was noted that Councilor Ray Burton passed away early this morning. He was a great help for those in the North Country.

### 2. Public Input: None

### 3. Status Report

#### I. New Appeals

##### **Docket No. 13-07 WtC – Judith Evans, Trustee of the L.M.E. Nominee Trust**

Subject: August 7, 2013 Permit Denial on Reconsideration, file #2013-00379

Status: September 5, 2013 received Notice of Appeal. 9/10/13 issued insufficient appeal letter. 9/13/13 received Revised Notice of Appeal. 9/17/13 issued receipt of revised appeal letter. Council to accept or dismiss appeal at its November 12, 2013 meeting.

- ***Councilor Henderson made a motion to accept the appeal, second by Councilor Slack. Motion passed unanimously.***

##### **Docket No. 13-08 WtC – Louis Gargiulo**

Subject: 8/14/13 Denial of permit application File #2013-01430

Hearing Officer: Not assigned

Status: 9/13/13 rec'd Notice of Appeal. 9/17/13 issued insufficient appeal letter. 10/18/13 rec'd revised notice of appeal, which was received 31 days after notice of insufficient appeal letter. 10/28/13 issued receipt of revised appeal letter. 11/1/13 rec'd request for council to accept the late filed revised appeal. Council to accept or dismiss appeal at its January 14, 2014, meeting.

##### **Docket No. 13-09 WtC – Robert and Jane Rafferty**

Subject: 8/22/13 Administrative Order No. 13-015 WD

Hearing Officer: Not assigned

Status: 9/19/13 rec'd Notice of Appeal. 9/24/13 issued insufficient appeal letter. 10/23/13 rec'd Revised Notice of Appeal. 10/23/13 issued receipt of revised appeal letter. 11/6/13 rec'd Request to Intervene from Joseph Barbone, Jr. Council to accept or dismiss appeal at its January 14, 2014, meeting.

**Docket No. 13-10 WtC – Alan Armstrong**

Subject: 7/11/13 Notice of Findings. This request for appeal was received untimely as well as being insufficient in many ways. Chairman Kimball will send a denial of the appeal letter.

- ***Councilor Prescott made a motion to deny the appeal as filed untimely, second by Councilor Slack. Motion passed unanimously.***

**Docket No. 13-12 WtC – N. Miles Cook III**

Subject: 9/27/13 Denial on Reconsideration for permit application file #2012-3200

Hearing Officer: Not assigned

Status: 10/23/13 rec'd Notice of Appeal. 10/24/13 issued insufficient appeal letter. 10/30/13 rec'd revised Notice of Appeal and issued Receipt of Revised Appeal letter. Council to accept or dismiss appeal at its January 14, 2014, meeting.

**II. Decisions that need to be written/finalized and issued.**

**Docket No: 12-07/11-03 WtC – Joseph DeVelis**

Subject: 1/25/11 Administrative Order No. 11-002 WD

Status: Subject: 1/25/11 Administrative Order No. 11-002 WD

Presiding Officer: David Conley assigned by AG on Nov. 28, 2012(for consolidated appeals)

Status: Hearing scheduled for April 9, 2013 at 9 a.m. March 11, 2013 received Appellants' Memorandum of Law. 3/25/13 received DES' and Appellants' Witness and Exhibit Lists. April 8, 2013 received Assented-to-Motion to Continue. 4/8/13 issued ruling granting Motion to Continue. 4/9/13 issued notice of rescheduled hearing which is scheduled for June 11, 2013 at 9 a.m. 4/17/13 received Assented to Motion to Amend Witness List. 4/18/13 issued ruling on Motion to Amend, which was granted. June 10, 2013 issued ruling on Appellants' Question of Law. Hearing was held on June 11, 2013 with deliberations scheduled for July 9, 2013. 7/2/13 issued via email, reminder of deliberations being held on July 9, 2013 at 10 a.m. to Attorneys Bisbee and Mulholland.

Deliberations were held on July 9, 2013. Draft Decision and Order is before the Council for consideration today, October 8, 2013. Draft Decision was approved with some edits on Oct. 8, 2013. Decision and Order on Notice of Appeal was issued on 10/23/13, denying the appeal.

**III. Hearings or PHCs Pending**

**Docket No: 12-10 WtC – Robert and Katherine Michele**

Subject: 9/4/12 Denial of Reconsideration for permit No. 2007-02868 issued to Joseph and Linda Bremner

Hearing Officer: David Conley, Esq. appointed by AG on 11/28/12

Actions: On Oct. 4, 2012 rec'd Petition for Appeal Oct. 5, 2012 issued receipt of appeal letter. Oct. 30, 2012 rec'd Objection to Petition for Appeal. Council accepted appeal with request for complete copies of the relevant court decision to be forwarded to the Council at its Nov. 13, 2012, meeting. Pre-hearing Conference(PHC) was held on 1/28/13 and continued to May 13, 2013 at 10 a.m. April 2, 2013 received Motion to reschedule Continued PHC from Appellant. 4/8/13 received Joint Opposition to Appellant's Motion to Reschedule Continued Pre-Hearing Conference. 4/9/13 the hearing officer denied Appellants' Motion to Reschedule Continued Pre-Hearing Conference. Ruling denying motion was issued 4/9/13. May 8, 2013 sent notice of unexpected conflict, Hearing Officer unable to attend scheduled PHC via email. 5/9/13 sent notice of rescheduled PHC scheduled for 5/17/13. 5/9/13 received Attorney Johnson's request to reschedule via email. 5/13/13 sent notice of newly rescheduled PHC for the same date but a different time. 5/17/13, 2<sup>nd</sup> PHO issued with hearing scheduled for October 8, 2013 at 9 a.m. June 21, 2013 received copy of Cheshire County Superior Court order on Bremner's Motion to Dismiss, which was denied. 6/28/13 received Appellant's, DES' and Permittee's Memorandums of Law. July 15, 2013 received Appellants' More Definite Statement of Facts In support of Appeal. September 10, 2013 sent email to the parties at the direction of the Hearing Officer, directing them to communicate with each other to establish an agreeable discovery schedule and determine time necessary for arguments. 9/18/13 received Fully Assented-to Motion to Reschedule Hearing to January 14, 2014. 9/24/13 issued letter granting Motion to Reschedule hearing and set new hearing date for January 14, 2014 at 9 a.m. 9/30/13 issued ruling on Appellants' Question of Law.

**Docket No: 13-03 WtC – Kevin and Melanie McNamara**

Subject: 4/4/13 Wetlands Minimum Impact Forestry Notification Decision on Reconsideration

Hearing Officer: David Conley, Esq. appointed by AG on 7/10/13

Status: May 2, 2013 received Notice of Appeal. 5/3/13 issued insufficient appeal letter. 5/15/13 received revised appeal. 5/16/13 issued receipt of appeal letter. Council to accept or decline appeal at its July 9, 2013 meeting. 7/9/13 Council accepted the Appeal. 7/10/13 issued appeal accepted letter. 7/31/13 sent notice of PHC scheduled for August 21, 2013 at 8:30 a.m. 8/9/13 received Appearance from Atty. Mulholland. 8/21/13 PHC was held and PHO was issued. 9/11/13 received Consented to Motion to Extend Time from PHO. 9/13/13 issued ruling granting the Motion to Extend Time.

**IV. Inactive/Status Letter or Pending Settlement/Withdrawal**

**Docket No: 10-10 WtC – Donald Lee**

Subject: 5/23/10 Decision on Reconsideration, Wetlands File No. 2008-01253

Presiding Officer: Chip Kimball assigned by AGO on 1/26/11; David Conley, Esq. appointed by AG on 5/8/13.

Status: Hearing scheduled for Jan. 10, 2012 per notice of PHO issued on 8/31/11 Received Suggestion of Bankruptcy on Dec. 5, 2011. On 12/6/11 rec'd withdrawal of appearance from appellant's attorney and issued Order for Continuance. Appeal is Stayed due to filing in Bankruptcy Court. May 7, 2013 received Motion to Remove Stay from Bankruptcy on the Appeal. 5/8/13 per request from Chairman Kimball, Ms. Scott requested another hearing officer via email. 5/8/13 issued ruling granting Motion to Remove Stay. 5/17/13 issued PHC notice scheduled for 6/12/13 at 10:30 a.m. June 12, 2013 received Summary of Procedural Background from Intervenor. Issued Pre-hearing order on 6/12/13. 6/14/13 issued Further Decision and Order on PHC with a status report to be filed by September 15, 2013. 9/10/13 received what appears to be a Motion from the Appellant to resume the appeal. 9/12/13 received Objection to Motion to Resume Donald Lee Appeal, and Intervenor's Status report. 9/16/13 received Appearance of Atty. Noether for the Department. State's Response to Applicant's Motion to Resume Appeal and State's Partially Assented-to Motion to Dismiss Appeal or to Affirm Denial and State's Status Report. Hearing Officer to rule on Motions and Objection. November 5, 2013 issued Order on Appellant's Motion to Resume Appeal and DES' Motion to Dismiss. Motion to Dismiss was granted.

**Docket No: 10-14 WtC – Akwa Marina Yacht Club**

Subject: 6/11/10 Decision on Reconsideration, Wetlands File No. 2009-01047

Presiding Officer: David Conley, Esq. appointed by AG on 12/22/11

Status: On Nov. 2, 2011, rec'd DES' addendum to the Witness and Exhibit List. 11-07-11 Assented-to Motion to Continue was filed. Motion to Continue was granted verbally on 11/7/11 and PO will have written ruling out within a few days. Rescheduled hearing for Feb 14, 2012 @ 9 a.m., notice sent on Dec. 30, 2011. Jan 4, 2012, appellant filed Assented-To Motion to Continue. Jan 9, 2012, PO granted Motion to Continue. Hearing has been rescheduled to June 12, 2012 @ 9 a.m., notice given 1/18/12. Hearing was held June 12<sup>th</sup>. Hearing was continued until a settlement agreement is made or either party requests to resume the hearing. The appellant's attorney will update the council within 60 days as to progress (Aug. 11, 2012). 2/8/13 issued Hearing Officer's order for an updated Status Report to be filed by April 5, 2013. April 4, 2013 received Appellant's Status Report requesting to submit another report in 60 days. 4/8/13 issued Hearing Officer's Order for an updated Status Report be filed by June 4, 2013. 6/4/13 received Appellant's Status Report requesting to submit another report in 60 days. 6/6/13 issued letter granting request to submit an updated Status Report in 60 days, by August 5, 2013. 8/5/13 received Appellant's Status Report requesting to submit another report in 60 days. 8/8/13 issued letter granting request to submit an updated Status Report in 60 days, by October 4, 2013. 10/4/13 sent request for status report by 10/28/13. 10/28/13 received Appellants' Status Report requesting a review hearing. November 1, 2013 received Withdrawal of representation by Collis Adams and an Appearance for DES from Gretchen Hamel.

**Docket No.: 12-14 WtC – Mastoran Corporation and B & P Realty Ventures, LLC**

Subject: 11/8/12 Denial on reconsideration of Denial of Application File #2012-00768

Hearing Officer: David Conley, Esq. appointed by AG on 2/13/13

Status: November 27, 2012 received Notice of Appeal and Motion to Stay Appeal. 11/28/12 issued insufficient appeal letter. December 28, 2012 received supplement to Notice of Appeal and Motion to Stay Appeal. January 3, 2013 issued receipt of revised appeal. Council accepted appeal at its January meeting. January 23, 2013 issued appeal accepted letter. Hearing Officer to rule on Motion to Stay Appeal. March 13, 2013 issued letter regarding the granting of the Motion to Stay Appeal.

4. **Old Business** -  
None

5. **New Business** -

a. **Webpage Update – Atty. Peter Demas, Legal Unit**

This new site is continuing the effort to try and help the public differentiate between DES and the Councils. It has a different look but the content is the same. If the Council has comments after reviewing it they are encouraged to contact Paula or Pete. Councilor Crosbie asked about including the checklist for the public to have for filing an appeal. That will be looked into.

b. **Wetlands Bureau Report – Collis Adams, Wetlands Bureau Administrator**

Collis gave a brief overview of bureau activities:

Rule re-write - is moving along. Commissioner Burack will be sending a letter to announce the rule making process and the goal. A lot of staff time is going into this. There will be 5 - 6 public outreach & listening sessions across the state, probably after the holidays. A draft will be given to the Council when it is ready.

Staffing – JoAnn Robinson resigned but has been filled.

Shoreland position has been posted.

Accounts - Wetlands account is stable.

Legislative – nothing of major significance on the wetland or shoreland front as of yet. They are asking legislators to wait to next session, after the rule re-write, to deal with any new legislation.

Chairman Kimball shared the following:

- 1) There is a LSR that will create a new environmental court.
- 2) HB 663 – (held over from last year) Chairman Kimball attended a study committee meeting last week regarding creation of one appeals board for all councils. It would take 2 members from each of the 4 councils to form the new one. They would no longer serve on their respective councils. There are some concerns still to be worked out as to the regulations of those who sit on this council.

c. **ARM Fund report - Lori Sommer, Wetlands Bureau**

Lori reported that 33 pre-proposals were initially received for the funds from across the state. 16 full grant applications were then submitted for all but 3 of the service areas. The Site Selection Committee met in September to look at the full applications. They then went to all sites in late September & October. On October 17<sup>th</sup> they decided to fund 9 projects. The letter from EPA was received today.

Recommendations for funding:

**Saco River Service Area:**

- ***Councilor Henderson made a motion to approve \$46,000 for the protection of the Green Hills Conservation Project in Conway, second by Councilor Lievens. Discussion was held. Motion passed unanimously.***

**Pemigewasset-Winnepesaukee River Service Area:**

- ***Councilor Henderson made a motion to approve \$175,000 for the protection of the Frazian Property in Hebron, second by Councilor Slack. Discussion was held. Motion passed unanimously.***
- ***Councilor Crosbie made a motion to approve \$110,000 for the protection of the Fogg Hill Bog in Center Harbor, second by Councilor Kennedy. Discussion was held. Motion passed unanimously.***
- ***Councilor Henderson made a motion to amend the Fogg Hill Bogg property award to \$98,500, second by Councilor Crosbie. Motion passed unanimously.***

**Salmon Falls – Piscataqua Rivers Service Area:**

- ***Councilor Lievens made a motion to approve \$75,000 for the protection of the Huppe Property in Farmington, second by Councilor Slack. Motion passed unanimously.***
- ***Councilor Kennedy made a motion to approve \$100,000 for the protection of the Calef Isinglass River Property in Barrington, second by Councilor Crosbie. Motion passed unanimously.***

**Merrimack River Service Area:**

- ***Councilor Lievens made a motion to approve \$65,400 for the McQuesten Pond Dam Removal in Manchester, second by Councilor Henderson. Motion passed unanimously.***

**Contoocook River Service Area:**

- ***Councilor Slack made a motion to approve \$15,000 towards the protection of the Green Crow Property, second by Councilor Crosbie. Discussion was held. Motion passed unanimously.***

**Middle Connecticut River Service Area:**

- ***Councilor Slack made a motion to approve \$60,000 towards the Ammonoosuc River Project in Lisbon, second by Councilor Lievens. Motion passed unanimously.***

Councilor Kennedy recused himself from the following review.

- ***Councilor Henderson made a motion to approve \$60,000 towards the protection of the Bailey/Clay Property in Lyme, second by Councilor Slack. Discussion was held. Motion passed unanimously with Councilor Kennedy abstaining.***

Councilor Henderson asked for an updated spreadsheet of the balances in each area. Lori will email it to the Council.

**6. Next Meetings –**

Councilor Lievens will be seeking reappointment.  
NH Association of Conservation Commissions(NHACC) had their annual meeting November 2<sup>nd</sup>.  
Chairman Kimball gave a talk on the Wetlands Council.

The Hooksett Appeal comes up before the Supreme Court tomorrow, on November 13, 2013.

No meeting in December.

There is a hearing at 9 a.m. on January 14, 2014, so the regular meeting will begin at 8:00 a.m.

**7. Adjournment**

- ***Councilor Lievens made a motion to adjourn, second by Councilor Crosbie. Motion passed unanimously.***

Meeting adjourned at 11:03 a.m.